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29 *Class Counsel*

30 **UNITED STATES DISTRICT COURT FOR THE**
31 **NORTHERN DISTRICT OF CALIFORNIA**
32 **SAN FRANCISCO DIVISION**

33 DZ Reserve and Cain Maxwell (d/b/a Max
34 Martialis), individually and on behalf of others
35 similarly situated,

36 v.

37 Meta Platforms, Inc. (f/k/a Facebook, Inc.),

38 Defendant.

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56 *Counsel for Defendant*

57 Case No.: 3:18-cv-04978-JD

58 **JOINT STATUS CONFERENCE**
59 **STATEMENT**

60 Status Conference: May 26, 2022
61 Time: 10:00 am
62 Court: Courtroom 11, 19th Floor
63 Hon. James Donato

1 Pursuant to the Court's directive, the Parties submit this joint statement in anticipation of
 2 the status conference set for May 26, 2022. Class Cert. Order at 17:11–13 (ECF No. 388).

3 **Joint Statement**

4 **I. Case History**

5 This case was filed on August 15, 2018. ECF No. 1. Following motions to dismiss and for
 6 judgment on the pleadings, the claims remaining are fraudulent misrepresentation and fraudulent
 7 concealment claims seeking damages and a claim under the California Unfair Competition Law
 8 for injunctive relief only.

9 On March 29, 2022, the Court certified this matter as a class action. Meta has filed a Rule
 10 23(f) petition but has not sought a stay of this matter.

11 **II. Ongoing Matters**

12 The parties participated in a full-day mediation with a private mediator on April 13, 2022.
 13 That mediation was not successful. As the Court directed, ECF No. 388 at 17:14–15, the parties
 14 have reached out to Magistrate Judge Thomas S. Hixson to schedule a settlement conference, and
 15 have a scheduling call with Magistrate Judge Hixson scheduled for May 23, 2022. ECF 414. The
 16 parties continue to engage in discussions about potential settlement of the case.

17 Plaintiffs filed a motion for the approval of the class notice plan on April 29, 2022. ECF
 18 No. 411.

19 A hearing on the notice plan is set for June 9, 2022. A hearing on Facebook's Motion for
 20 Summary Judgment and the parties' motions to exclude experts is set for June 23, 2022.

21 **III. Trial Date**

22 In July 2021, the Court **set the pretrial conference for September 22, 2022, and set the**
 23 **trial date for October 3, 2022.** ECF No. 331. The parties jointly propose that the pretrial
 24 conference date and trial date remain on September 22, 2022 and October 3, 2022 respectively.

25 **Plaintiffs' Portion**

26 As noted above, on June 23, 2022, the Court is set to hear the parties' motions to exclude,
 27 including Meta's motions to exclude Dr. Greg Allenby and Bruce McFarlane, and portions of the

1 opinion of Dr. Timothy Roughgarden. These two motions are nearly identical to Meta's previously
 2 filed motions to exclude the same experts in connection with class certification. On March 29,
 3 2022, the Court denied Meta's motion to exclude Dr. Greg Allenby. The Court excluded
 4 McFarlane and held that, "Any portion of Dr. Roughgarden's opinions that is drawn on Mr.
 5 McFarlane's work is also excluded, unless an independent basis for it is demonstrated. The Court
 6 declines to undertake that analysis on the record as it stands. Meta may pursue it in a motion in
 7 limine, as circumstances warrant." ECF No. 388 at 14:15-18.

8 Following the Court's class certification decision and disposition of Meta's *Daubert*
 9 motions, the parties met and conferred regarding a stipulation under which Meta would withdraw
 10 its nearly identical motions. Meta then filed a reply brief raising new arguments that there is no
 11 "independent basis" for Dr. Roughgarden's opinion - the arguments that the Court directed Meta
 12 to raise in a separate motion in limine. ECF No. 406 at 1:15-16; ECF No. 388 at 14:15-18.
 13 Unfortunately, Plaintiffs do not believe the parties will be able to reach agreement on a stipulation
 14 to withdraw Meta's motions to exclude.

15 **Defendant's Portion**

16 Meta tried in good faith to reach a stipulation with Plaintiffs that would allow it to
 17 withdraw its pending motions to exclude Dr. Allenby and Mr. McFarlane (and Plaintiffs' other
 18 experts that rely on them, including Dr. Roughgarden) while preserving Meta's rights to challenge
 19 their testimony at trial and on appeal. The parties were unable to reach a stipulation that
 20 adequately preserved Meta's rights because they disagree about the impact of the Court's class
 21 certification decision on Dr. Allenby's opinions, and the viability of one of Dr. Roughgarden's
 22 opinions following the Court's decision excluding Mr. McFarlane. These two issues about the
 23 impact of the Court's decisions on Dr. Allenby's and Dr. Roughgarden's opinions were not (and
 24 could not be) presented in or decided by the *Daubert* motions Meta filed at class certification (in
 25 fact, Plaintiffs concede as much above), and thus Meta could not agree to withdraw its pending
 26 motions without assurances about the preservation of its arguments that Plaintiffs would not
 27 provide.

28

1 DATED: May 19, 2022

2

3 By: /s/ Geoffrey Graber

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Respectfully submitted,

By: /s/ Andrew B. Clubok

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